

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

AUBURN SALES, INC.,

Case No. 14-CV-10922  
Hon. Matthew F. Leitman

Plaintiff, Counter Defendant,

v.

CYPROS TRADING & SHIPPING, INC., JOSEPH  
KILANI, and FADI KILANI,

Defendants, Counter Plaintiffs

Eric R. Bryen, P.C.	Goldstein, Bershad & Fried, P.C.
Eric R. Bryen (P35404)	Aaron Scheinfeld (P67495)
Attorney for Auburn	Attorney for Defendants, Counter Pls
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AUBURN'S ANSWER TO COUNTER COMPLAINT

Auburn Sales, Inc, through counsel, answers the Counter Complaint as follows:

1. Admitted.
2. Denied as untrue. The representation comes from the OEM supplier. Counter Plaintiffs were fully aware that Auburn procured the described axles with the Ford OEM part number from the Ford OEM manufacturer, Mid-West Forge Corporation, via its agent Erie Sales, LLC. See Exhibit A, the chain of title.
3. Auburn lacks information sufficient to form a belief as to the truth of the allegations.

4. Upon information and belief, the allegation is untrue. Auburn specifically believes that Counter Plaintiffs, without authority, repackaged the goods in Ford packaging.

5. Upon information and belief, the allegation is untrue.

6. Denied as untrue. Auburn represented to Counter Plaintiffs that Auburn purchased the parts from the OEM manufacturer, Mid-West Forge Corporation, via its agent Erie Sales, LLC, who, by part number, represented to Counter Plaintiffs the parts to be OEM items.

7. Denied as untrue.

#### Count I

#### Fraudulent Misrepresentation

8. Auburn realleges its Answers to ¶¶1-7.

9. Denied as untrue. Auburn purchased the parts from the OEM manufacturer Mid-West Forge Corporation, via its agent Erie Sales, LLC, who, by part number, represented the parts to be OEM items.

10. Denied as untrue.

11. Denied as untrue.

12. Denied as untrue.

13. Auburn lacks information sufficient to form a belief as to the truth of the allegations.

14. Upon information and belief the allegation is untrue. Any losses occurred as a result of the Counter Plaintiffs reboxing the parts in a counterfeit Ford box.

## Count II

### Breach of Contract

15. Auburn realleges its Answers to ¶¶8-14.

16. Denied as untrue. Auburn purchased the parts from the OEM manufacturer Mid-West Forge Corporation, via its agent Erie Sales, LLC, who, by part number, represented the parts to be OEM items.

17. Denied as untrue. Auburn purchased the parts from the OEM manufacturer, Mid-West Forge Corporation, via its agent agent Erie Sales, LLC, who, by part number, represented the parts to be OEM items.

18. Denied as untrue.

19. Denied as untrue.

20. Upon information and belief, denied as untrue.

Wherefore, Auburn prays for dismissal of the Counterclaim and for an award of costs and attorney fees.

ERIC R. BRYEN, P. C

/s/ Eric R. Bryen  
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Dated: October 22, 2014

Response to Defendants' Reservation of Right  
to File Additional Affirmative Defenses

See *Kelley v Thomas Solvent Co*, 714 FSupp 1439, 1452 (WD Mich1989)  
("Plaintiff objects to defendants' reserved right to add other and further affirmative  
defenses at a later time... . This reserved right to add other defenses shall be  
stricken from defendants' amended answers. It serves no function as is[,] and any  
addition of defenses is properly achieved by the terms of the Rules described  
above."). See also *Vale v City of New Haven Police Dept*, 2013 WL 5532133, \*3  
n3 (D Conn 2013). Any "new" affirmative defenses can be added only by motion,  
not reservation.

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Affirmative Defenses

Auburn asserts the following affirmative defenses to the Counterclaim:

1. All damages suffered by the Counter Plaintiffs proximately resulted from their own acts.
2. Counter Plaintiffs are seeking from the Court an award of damages caused by their own criminal conduct, specifically, criminal counterfeiting as evidenced by Counter Plaintiff Fadi Kilani's New York federal court guilty plea.
3. Intervening circumstances of Counter Plaintiffs' acknowledged criminal activity.
4. Promissory estoppel. The Counter Plaintiffs had agreed not to repackage the parts.
5. Waiver, in that with full knowledge of the OEM issue, Counter Plaintiffs sought to continue purchasing parts from Auburn.

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Dated: October 29, 2014

#### Certificate of Service

On October 29, 2014, the undersigned served this Answer to Counterclaim, Response to Defendants' Reservation of Right to File Additional Affirmative

Defenses, and Affirmative Defenses on Counter Plaintiffs' counsel via the Court's ECF system.

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/s/ Eric R. Bryen

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Dated: October 22 2014